# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**SPECIAL CIVIL APPLICATION No. 11478 of 2001**
**With**
**CIVIL APPLICATION No. 12836 of 2005**
**In**
**SPECIAL CIVIL APPLICATION No. 11478 of 2001**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**MANILAL JIVRAMDAS PATEL & 2 - Petitioner(s)**

**Versus**

**THE COLLECTOR - Respondent(s)**

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**Appearance :**
MR AMIT M PANCHAL for Petitioner(s) : 1 - 3.
MR SIRAJ GORI, AGP for Respondent(s) : 1,
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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 21/02/2006**

**ORAL JUDGMENT**

1.Rule. Learned AGP Shri Gori waives service of notice of rule on behalf of the respondent.

2. In the present petition, the petitioners have challenged the order dated 18.8.2001 passed by the Collector, Mehsana as upheld by the order dated 15.11.2001 passed by the Secretary (Appeals), Revenue Department, Government of Gujarat.

3. There are as many as 93 residential units constructed by the petitioners on which the petitioners contend that they are residing. The construction put up by the petitioners was found to be in breach of some of the rules and regulations governing such construction. It appears that some of the residents of the society had also objected to certain aspects of the construction. The objections included those pertaining to common plot, internal roads of the society and the construction carried out by the petitioners.

4. The Collector finding that the construction was not strictly in accordance with the rules and regulations and according to building plans approved passed the impugned order dated 18.8.2001 and directed removal of the offending construction carried out by the plot holders. The petitioners approached the State Government by filing the revision application which, however, came to be rejected on 15.11.2001. The petitioners thereafter preferred the present petition

in which initially while issuing notice, the Court also granted stay against the execution and operation of the impugned order passed by the Collector as upheld by the State Government. Apparently, some time thereafter, the interim relief which was limited was not extended. The respondent, therefore, issued a notice to the petitioners for demolition and the petitioners preferred Civil Application No.12836 of 2005 in which the interim protection was granted to the petitioners on 10.1.2006. Accordingly, the said Civil Application and the main Special Civil Application have been placed before this Court for further hearing. Both the sides agreed that the main petition can be disposed of. I have accordingly, heard the learned advocates appearing for the parties in the main petition.

5. Learned advocate Shri Panchal for the petitioners submitted that though it may be true that the construction carried out by some of the plot holders who are before this Court may not strictly conform to the building plans approved by the Collector, such construction is otherwise not impermissible according to the building regulations. He submitted that there is no breach of requirement of providing for an open common plot and that all that the Society has done is

to shift the common plot location. He, however, agreed that such shifting was without prior permission from the Collector and was not in accordance with the plans approved. He further submitted that such irregularity should not invite demolition of the structures on large scale basis which would eventually result into great loss and injury to several persons who are belonging to the lower middle class strata of society. On the other hand, learned AGP Shri Gori opposed the petition and submitted that the orders passed by the Collector and the State Government are in accordance with law. He submitted that indisputably the construction is not strictly according to the building plans approved. He therefore requested that the petition be rejected.

6. Having heard the learned advocates, it would appear that the petitioners have carried out construction which is not strictly accordingly to the building plans approved. However, it is possible that much of the construction so carried out may not be impermissible as per the building regulations. To the extent such construction that has been carried out by the petitioners which is otherwise permissible a per the building regulations, it would be appropriate for the Collector to consider whether the same can be

regularized, if need be upon collection of fine. However, the construction carried out by the petitioner which does not conform to the building regulations, obviously cannot be regularized. All these aspects of the matter need to be examined by the Collector. For the above purpose, the petitioners are directed to make a representation to the Collector with detailed drawings of the construction carried out by them. It will be open for the Collector to examine the question of legality of such construction and pass fresh orders in accordance with law bearing in mind the observations made herein-above.

7. For the above purpose, the impugned order dated 18.8.2001 passed by the Collector as also the order dated 15.11.2001 passed by the Secretary (Appeals) are quashed. The petitioners if make a representation within a period of two months from today, the Collector may take expeditious decision. The Collector shall also permit the objectors to raise objections and take the same into account before passing the final order.

8. With the above directions, the petition is disposed of. Rule is made absolute to the above extent with no order as to costs.

9. In view of the order passed in the main matter, Civil

Application does not survive and the same is disposed of accordingly. Notice is discharged.

(Akil Kureshi, J.)

(vjn)